Department of Commerce \$ National Oceanic & Atmospheric Administration \$ National Marine Fisheries Service

NATIONAL MARINE FISHERIES SERVICE INSTRUCTION 30-112-01 JANUARY 28, 1998

Administration and Operations

Policy for Interagency Agreements and MOAs or MOUs

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	REVIEW POLICY AND PROCEDURE AGREEMENTS AND MOAs OR MOU
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NMFS

Clearance and Review Policy and Procedures

for
Interagency Agreements
and
Memoranda of Agreement or Understanding

Issue Date: January 28, 1998

NMFS Clearance and Review Policy and Procedures for Interagency Agreements and Memoranda of Agreement or Understanding

PURPOSE

This document prescribes policies and procedures for the review and clearance of Interagency Agreements and Memoranda of Agreement or Understanding between elements of the National Marine Fisheries Service and other organizations outside the Department of Commerce.

SCOPE

The guidance contained herein applies to all NMFS organizational units involved in reimbursable work and unfunded relationships with other entities as set forth in the Policy section below. It is meant to supplement the guidance contained in the References and Authorities section. This document does not prescribe procedures for the review and clearance of any contract, grant, or cooperative agreement since those agreements are governed by the Federal Acquisition Regulations, Federal Grant and Cooperative Agreement Act, Department of Commerce Administrative Order 203-26, and other Department of Commerce policy guidance. Nor does it apply to the Cooperative Research and Development and Invention Licensing Agreements under the Federal Technology Transfer Act of 1989 which are governed by NOAA Administrative Order 201-103 dated November 13, 1989. It also does not apply to Interagency Personnel Agreements which are addressed in Personnel Regulations.

REFERENCES AND AUTHORITIES

Department of Commerce Accounting Principles and Standards Handbook, Chapters 17 and 18.

Department Administrative Order 203-26, Department of Commerce Grants Administration, dated May 15, 1985.

Department Organization Order 10-5, Chief Financial Officer and Assistant Secretary for Administration, dated January 22, 1996.

NOAA Administrative Order 201-105, Memoranda of Agreement or Understanding, dated October 22, 1992.

NOAA Budget Handbook, Chapter 2, Section 03, Reimbursable Task Planning (RTP), dated June 30, 1994.

OMB Circular No. A-25, SUBJECT: User Charges, dated July 8, 1993.

POLICY

In furthering its programs, NMFS becomes involved on a continuing basis with a large number of international, Federal, state and local agencies, universities, and other private institutions. Relationships may or may not be financial transactions. These relationships are encouraged but require proper documentation and review by NMFS Headquarters and the Office of General Counsel (OGC), Department of Commerce. Such reviews ensure that agreements are in the proper format, reflect the appropriate authority for entering into the specific relationship and do not violate any of the laws governing NMFS obligations of its appropriated funds. Exceptions to the review requirement are Economy Act interagency agreements of less than \$100,000 and unfunded Memoranda of Agreement or Understanding (MOA/U) between Federal entities. However, if the unfunded MOA/Us involves the transfer or loan of personal property to another Federal entity, the OGC review is required. All other such agreements, including those with Federal entities pursuant to the Department's Joint Project Authority, are subject to the review requirements.

In many cases, contracts, grants or cooperative agreements would not be the appropriate instrument to reflect the relationship between the two parties. (This is particularly true when both parties are Federal entities.) Accordingly, an Interagency Agreement or an MOA/U is the proper vehicle for documenting the arrangement between the organizations.

An Interagency Agreement would be the appropriate instrument when funding is accepted by NMFS for work to be conducted by NMFS employees, contractors or grantees. Also, NMFS transfers funds to other agencies when authority exists to do so and the other agency is uniquely qualified to conduct the work for NMFS.

The authorizing statute for some Government programs requires agencies to obtain advance funding for projects. If not required by statute, funding from Federal entities may be provided in advance of the work to be conducted or reimbursed as work is completed; however, advances are considered the preferred method of payment. Agreements for NMFS to conduct work for non-Federal organizations **must** contain advance payment provisions, unless a waiver has been obtained. (See Chapter 2, Section 03, NOAA Budget Handbook, for details on advance payments, including exceptions to the requirement. Also, see **DEFINITIONS** attachment for discussion of **Waivers**.)

A Model Interagency Agreement containing both mandatory and optional provisions is included in Chapter 2 of the NOAA Budget Handbook. This format may be used for agreements with Federal agencies for Economy Act transactions. A sample format to be used for Joint Project Agreements between NMFS and Federal and non-Federal organizations is attached to this guidance.

Agreements between NMFS and other organizations that do not involve funding are documented in MOA/U. The terms MOA and MOU are interchangeable. The acronym MOA/U shall be used throughout this document for consistency. NAO 201-105 provides guidance on drafting MOA/Us and the attachment to that Order may be used as a guide for drafting an MOA/U.

RESPONSIBILITIES

To ensure sound management in the administration of Interagency Agreements and MOA/Us, NMFS managers are expected to have an understanding of the requirements for each authorizing statute they select to justify entering into an Interagency Agreement or an MOA/U. The specific responsibilities of NMFS personnel involved in the process should be clearly defined in job descriptions and performance plans.

The following prescribes the minimum responsibilities assigned to such officials.

- a. NMFS field and Headquarters managers are responsible for:
- (1) maintaining internal management control procedures that comply with policies set forth in this policy document and the References cited above;
- (2) ensuring that appropriate staff understand the documentation and review requirements for the agreements discussed in this policy memorandum;
- (3) ensuring proposed agreements are forwarded by the appropriate Regional Administrator, Science Director or Headquarters Office Director to the Director, Office of Operations, Management and Information, (F/OM), ATTN: F/CU, at least two months prior to the effective date or start date of work;
- (4) providing complete explanation as to why agreements are not submitted for review and clearance at least two months prior to the effective date or start date of work;
- (5) ensuring that all MOA/Us and Interagency Agreements, both funds coming into NMFS and funds going out to other organizations, are justified as appropriate undertakings and cite the applicable legal authority(ies) for entering into the agreement;
- (6) ensuring a provision requiring advance funding is in Interagency Agreements, if required by the applicable legal authority(ies);
- (7) ensuring full cost recovery is achieved on reimbursable projects in compliance with the NOAA-wide Standardized Labor Distribution Worksheet Procedures issued June 26, 1996 by the Office of Finance and Administration. (See **DEFINITIONS** attachment for discussion of **Waivers**);
- (8) ensuring that reimbursable agreements include budget breakouts of estimated total project costs including direct labor and the appropriate overhead rate as determined by the NOAA Office of Finance and Administration;
- (9) ensuring that Joint Project Agreements include appropriate documentation and separate budget breakouts of costs contributed by NMFS and the partner organization to demonstrate equitability (See documentation requirements Paragraph d. PROCEDURES FOR REVIEW AND CLEARANCE OF INTERAGENCY AGREEMENTS AND MOA/Us);

- (10) ensuring that reimbursable agreements for more than one year include estimated funding for each of the subsequent years;
- (11) ensuring that user charges are imposed on recipients when special benefits have been conveyed beyond those occurring to the general public; and
- (12) providing the Director, F/OM, a copy of all signed agreements, both funded interagency and unfunded MOA/Us, including amendments (changes) and notices of termination.
- b. The Director, Office of Operations, Management and Information is responsible for:
 - (1) providing assistance to NMFS managers in developing the agreements cited herein;
- (2) reviewing agreements and related documents to ensure compliance with policies and procedures related to such agreements;
- (3) obtaining OGC clearance and preparing all related approval documents and distributing copies to interested parties, e.g., F/OM1, the agreement originating office, Regional Administrator (for Center agreements) and the partner organization;
- (4) assigning reimbursable task numbers for reimbursable agreements, if they do not already exist, after they have been cleared by the OGC, or upon request from the originating office for those Economy Act agreements of less than \$100,000;
 - (5) conducting follow up with the OGC and providing status information to NMFS offices;
- (6) issuing policy guidance as necessary and serving as the principal policy contact on all matters related to Interagency Agreements, and MOA/Us;
 - (7) maintaining Interagency Agreement and MOA/U files; and
- (8) providing the Administrative Services Division, OFA53, a copy of all signed MOA/Us, including amendments (changes) and notices of termination.

PROCEDURES FOR REVIEW AND CLEARANCE OF INTERAGENCY AGREEMENTS AND MOA/Us

a. All new Interagency Agreements and MOA/Us subject to the review requirements, as well as amendments/modifications to existing agreements, must be submitted to the Director, F/OM, ATTN: F/CU, at least two months before the start date. This will allow time for review by F/OM and clearance by the OGC before the agreement is effective. Any agreement not submitted two months before the start date must be accompanied by a complete explanation, signed by the Regional Administrator, Science Director or Office Director, as to why the submission did not meet the two month requirement.

Exceptions to the review and clearance process are:

- (1) time extensions with no change to the scope of work;
- (2) Economy Act agreements of less than \$100,000;
- (3) funding for subsequent years of work described in the original agreement cleared by the OGC, if there is no significant change to the scope of work; and
 - (4) Unfunded MOA/Us between Federal entities.
- **b.** Any agreement that has already been initiated must be accompanied by a full explanation signed by the Office Director, Science Director or Regional Administrator as to why it was not submitted to NMFS Hqs prior to the start date and what harm would occur to the Government if the project were suspended pending OGC clearance. The explanation must also state what action has been taken to ensure that everyone involved understands the process to preclude similar action in the future. The Assistant Administrator for Fisheries expects such actions to be rare occurrences.
- c. The transmittal memorandum or supporting documentation for reimbursable agreements must demonstrate that:
- (1) the task cannot be performed economically by the requesting agency with its own facilities or by government-wide service agencies;
- (2) the services would not be considered to be in competition with private enterprise because of NMFS's unique expertise and activities;
- (3) the end results will serve the public interest and are consistent with NMFS programs;
- (4) undertaking the projects would not result in the diversion of resources to the detriment of NMFS' basic programs;

- (5) the results of the service will not result in controversy that will have an adverse effect on the Department's reputation for impartiality and objectivity; and
 - (6) no exclusive proprietary interest would accrue to the other party.

These same rules apply when NMFS transfers funds to another organization for services or projects.

- d. A Joint Project Agreement (JPA) must include documentation explaining that:
 - (1) the project is essential to the furtherance of NMFS's programs;
- (2) the project cannot be done as effectively without the participation of the partner organization and NMFS and is of mutual interest to both parties; and
- (3) the cost for the project is apportioned equitably, unless a waiver of any portion of the costs has been approved. (See **DEFINITIONS** attachment for discussion of **Waivers**).

Since costs charged to a reimbursable task must <u>not</u> include charges for resources not actually used to accomplish a project, funds transferred in from other Federal agencies **solely** to support a contract, cooperative agreement, or grant are not joint project agreements.

A JPA requires both the NMFS and the partner organization to contribute resources on an equitable basis when they engage in projects or perform services on matters of mutual interest. The budget for the project or the service must include separate breakouts of costs contributed by NMFS and the partner organization to demonstrate equitability in the conduct of the joint project, and the agreement itself must explain that the cost for the project is apportioned equitably. A sample JPA is attached to this guidance.

- e. Conveyance of special benefits to recipients, beyond those occurring to the general public, require the collection of user fees. User fees are to be collected in advance of, or simultaneously with the rendering of services, unless appropriations and authority are provided in advance to allow reimbursable services. Absent statutory authority to the contrary, user fees collected by NMFS must be deposited into the Treasury.
- f. Each agreement, subject to the review requirements must be forwarded by a transmittal memorandum addressed to the Director, F/OM, ATTN: F/CU, signed by the Office Director, Science Director or Regional Administrator. Science Directors must ensure that a copy of the agreement and the transmittal memorandum is also sent to the Regional Administrator. The memorandum should contain the appropriate information cited above as applicable to that particular agreement. Sample transmittal memoranda for an Interagency Agreement (Reimbursable), a joint project agreement and an MOA/U are attached to this document. Also attached is a Checklist and a list of Definitions to aid in preparing Interagency Agreements and MOA/Us.

- g. Upon receipt of the cleared agreement from OGC, the Director, F/OM, will send the clearance to the initiating office via memorandum. If signature authority is at the Assistant Administrator (AA) level, the AA will sign the agreement and the Director, F/OM, will transmit to the initiating office and to the other party(ies). Guidance on approval and signature authority is as follows:
- (1) Delegations and approvals for reimbursable agreements are set forth in Chapter 2, NOAA Budget Handbook. In addition, a May 1990 memorandum from the Assistant Administrator for Fisheries established reimbursable task approval for the NMFS. For interagency reimbursable agreements, Office Directors, Regional Administrators and Science Directors may approve and sign under \$100,000. The Assistant Administrator for Fisheries approves and signs \$100,000 and over. Interagency reimbursable agreements \$1,000,000 or more or that require 10 FTEs must be sent to the Assistant Secretary/Deputy Administrator for approval.
- (2) Unfunded MOA/Us should be signed at the lowest level to which the significant responsibilities have been delegated. The Assistant Administrator, Office Directors, Regional Administrators, and Science Directors shall sign all MOA/Us for which they have been delegated programmatic authority, except any proposed MOA/U which involves a major policy decision or has a potentially controversial or public interest implication. In such cases, the Under Secretary and Administrator of NOAA shall approve or sign.

F/OM1 will establish a reimbursable task number for all cleared agreements. If the agreement is a reimbursable \$100,000 or more, the Director, F/OM will obtain the signature of the AA or designee for the acceptance document and transmittal letter to the sponsor. If the agreement is under \$100,000, the clearance documents will be forwarded to the appropriate official for signature and transmittal to the sponsor with a copy to F/OM1.

Attachments

Sample Transmittal Memoranda Interagency Agreement and MOA/U Checklist Definitions Sample Joint Project Agreement

SAMPLE TRANSMITTAL MEMORANDUM FOR INTERAGENCY AGREEMENT

MEMORANDUM FOR: Director, F/OM, ATTN: F/CU

FROM:

Director, F/NWC

SUBJECT:

Transmittal of Reimbursable Agreement for Clearance

(If the funding to be provided by the sponsor is "pass through" money for contracts/cooperative agreements/grants, the memorandum should so state and provide the number of the Agreement if it already exists.)

We have determined that the requesting agency cannot perform the project (or service) economically. We have also determined that the services covered by this Agreement are not in competition with private enterprise and will serve the public interest. The undertakings are **consistent** with NMFS programs and will not result in diversion of resources to the detriment of our basic programs. Further, the results of the service will not result in controversy that will have an adverse effect on the Department's reputation and no exclusive proprietary interest will accrue to the other party to this Agreement.

The following additional information is provided to aid the clearance process:

Funding Agency: U. S. Department of the Army, Corps of Engineers, Portland District

Amount of Reimbursement: \$100K

Technical Contact Person: XXXXXXXXXX

Who Will Accomplish the Work: Coastal Zone Division

Subject/Key Word: The Dalles Survival

New/Existing Agreement: New

NMFS Authority: Anadromous Fish Conservation Act, 16 U.S.C. 757a-757g, Mitchell Act, 16

U.S.C. 755-757, and the Endangered Species Act, 16 U.S.C., 1531-1543

Funding Agency Authority: 31 U.S.C. 1535, The Economy Act

Number of FTE(s) Required: 0.39

Organization: F/NWC

If you have any administrative questions, please contact XXXXXXXXX at 206-XXXXXX.

Enclosure

cc: Regional Administrator, F/NW

SAMPLE TRANSMITTAL MEMORANDUM FOR INTERAGENCY AGREEMENT JOINT PROJECTS

MEMORANDUM FOR: Director, F/OM, ATTN: F/CU

FROM:

Director, F/NWC

SUBJECT:

Transmittal of Joint Project Agreement for Clearance

Enclosed is a new joint project agreement between our Center and the U. S. Fish and Wildlife Service, Department of Interior, entitled, XXXXXXXXXXXXXXXXXXXXXX, for your review, approval and transmittal to the Office of General Counsel for clearance. (If the action is an amendment to an existing agreement, the memorandum should provide the NMFS Control Number for the original agreement clearance or last amendment and the name of the attorney who reviewed the last action, if known.) The Agreement includes a statement of work (or a proposal) for the project and budget breakouts for both agencies of total project costs including direct labor and the appropriate overhead rate for the NMFS activity as determined by the NOAA Office of Finance and Administration.

The following additional information is provided to aid the clearance process:

Funding Agency: U. S. Fish and Wildlife Service

Total Amount of Project: 100K

NMFS Cost: 50K FWS Cost: 50K

Technical Contact Person: XXXXXXXXXXX

Who Will Accomplish the Work: Coastal Zone Division

Subject/Key Word: The Dalles Survival

New/Existing Agreement: New

NMFS Authority: Anadromous Fish Conservation Act, 16 U.S.C. 757a-757g, Mitchell Act, 16 U.S.C. 755-757, and the Endangered Species Act, 16 U.S.C., 1531-1543, 15 U.S.C. 1525

Funding Agency Authority: 42 U.S.C. 4321, Environmental Policy Act

Number of FTE(s) Required: 1

Organization: F/NWC

If you have any administrative questions, please contact XXXXXXXXX at 206-XXXXXXX.

Enclosure

cc: Regional Administrator, F/NW

SAMPLE TRANSMITTAL MEMORANDUM FOR MOA/Us

MEMORANDUM FOR: Director, F/OM, ATTN: F/CU

FROM:

Director, F/NWC

SUBJECT:

Transmittal of MOA/U for Clearance

Enclosed is a new Memorandum of Agreement (MOA) between our Center and the Department of Fish and Wildlife, State of Washington, entitled, XXXXXXXXXXXXXXXXXXXXXXXXXX, for your review, approval and transmittal to the Office of General Counsel for clearance. (If the action is an amendment to an existing agreement, the memorandum should provide the NMFS Control Number for the original agreement clearance or last amendment and the name of the attorney who reviewed the last action, if known.) The Agreement addresses the purpose and scope, cites references and authority, includes a description of the undertakings to be assumed by both parties; explains the interest of third parties such as the Congress, state legislatures, or university trustees and states the term of the agreement in accordance with NAO 201-105 dated October 13, 1992.

The following additional information is provided to aid the clearance process:

Partner Agency: Department of Fish and Wildlife, State of Washington

Amount of Reimbursement: No funds

Technical Contact Person: XXXXXXXXXXX Responsible Office: Coastal Zone Division Subject/Key Word: The Dalles Survival

New/Existing Agreement: New

NMFS Authority: Endangered Species Act, 16 U.S.C., 1531-1543 and the National Environmental

Policy Act, 42 U.S.C. 4321, et seq

Partner Agency Authority: XXXXXXXXXXXXX

Number of FTE(s) Required: 0.39

Organization: F/NWC

If you have any administrative questions, please contact XXXXXXXXX at 206-XXXXXXX.

Enclosure

cc: Regional Administrator, F/NW

INTERAGENCY AGREEMENT AND MOA/U CHECKLIST

All Agreements

- 1. Does the agreement cite applicable administrative/programmatic legal authority(ies) for the action?
- 2. Does the agreement relate the objectives to the legal authority and to other agency policies and goals, as appropriate?
- 3. Does the agreement provide a comprehensive description of what is being agreed to?
- 4. Does the agreement state the duration of the arrangement?
- 5. Does the agreement state that NMFS's commitments and obligations under the agreement are subject to the availability of funds?
- 6. Does the signature block reflect the appropriate official per the delegations of authority?
- 7. If the action is a modification to an agreement previously reviewed by the Office of General Counsel, is a copy of the OGC clearance attached with the name of the attorney who reviewed the matter provided?

Reimbursable Transfers of Funds

- 1. Does the agreement include a provision requiring advance funding (if the legal authority requires it)?
- 2. If not required by legal authority and the agreement is with another Federal agency, does the transmittal memorandum explain why advance funding cannot be obtained?
- 3. If the agreement is with a non-Federal sponsor that will not make advance payments, has a waiver been obtained in accordance with the NOAA Budget Handbook?
- 4. Does the agreement indicate whether the funding is one or no year?
- 5 Does the agreement include a budget breakout of total costs including direct labor and the appropriate overhead rate?
- 6. If total costs are to be recovered, does the transmittal memorandum contain a statement that full cost recovery will be achieved in compliance with the NOAA-wide Standardized Labor Distribution Worksheet Procedures issued June 26, 1996?

- 7. If total costs are not to be recovered, has a waiver been prepared and approved in accordance with the NOAA Budget Handbook for distributed costs and provided with the transmittal memorandum?
- 8. If the agreement is for a longer period than the current fiscal year, does agreement include estimated funding levels for each of the subsequent years and have a provision that says "funding is currently available for this fiscal year, however, performance beyond current fiscal year is dependent on availability of funds?"
- 9. Does the transmittal memorandum or other supporting documentation advise that (1) the requesting agency cannot perform the project (or service) economically; (2) the services covered by the agreement are not in competition with private enterprise; (3) the end results will serve the public interest and are consistent with NMFS programs; (4) undertaking the project will not result in diversion of resources to the detriment of NMFS basic programs; (5) the results of the service will not result in controversy that will have an adverse effect on the Department's reputation; and (6) no exclusive proprietary interest will accrue to the other party?
- 10. If the agreement is an Economy Act transaction, does the agreement state that: (a) funds are available; (b) the order is in the best interest of the Government; (c) the agency to fill the order or provide the services is able to do so; and (d) the goods or services cannot be provided as conveniently or cheaply by a commercial enterprise?
- 11. Is the transfer of funds for the award of a new (or modification of an existing) contract, cooperative agreement or grant? If the action is a modification, does the agreement reference the contract, cooperative agreement or grant number?

Joint Project Agreements

- 1. Does the agreement explain that the project is of mutual interest to both parties and cannot be done as effectively without the participation of the partner and NMFS?
- 2. Does the agreement explain that the cost for the project is apportioned equitably?
- 3. Does the transmittal memorandum explain that the project is essential to the furtherance of NMFS's programs?
- 4. Does the agreement identify the partner as a nonprofit organization, research organization, or public organization or agency?
- 5. Does the agreement include budgets for each of the participants?
- 6. If the cost is not apportioned equitably, has a waiver been obtained from the Under Secretary for Oceans and Atmosphere or designee?

DEFINITIONS

Contract

The legal instrument reflecting a relationship between the NMFS and a business, organization or individual whenever: (a) the principal purpose of the relationship is the acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government, or (b) it is determined in a specific instance that it is appropriate to use a type of procurement contract. A contract may also refer to the legal instrument reflecting a relationship between a recipient and contractor or between such contractor and subcontractor.

Cooperative Agreement

The legal instrument reflecting a relationship between the NMFS and a recipient (individual or entity) whenever: (a) the principal purpose of the relationship is to provide financial assistance to the recipient and (b) substantial involvement is anticipated between NMFS and the recipient during performance of the contemplated activity. Financial assistance is the transfer of money, property, services or anything of value to an recipient in order to accomplish a public purpose of support or stimulation which is authorized by Federal statute. Cooperative Agreements are subject to the same Office of Management and Budget (OMB), Treasury, and other Federal directives as grants. DAO 203-26, Department of Commerce Grants Administration, prescribes policies for the award and general administration of Department of Commerce grants and cooperative agreements.

Economy Act, 15 U.S.C. § 1535

Relevant portions of the Act are as follows:

The head of an agency or major organizational unit within an agency may place an order with a major organizational unit within the same agency or another agency for goods or services if--

(1) amounts are available; (2) the head of the ordering agency or unit decides the order is in the best interest of the United States Government; (3) the agency or unit to fill the order is able to provide the ordered goods or services; and (4) the head of the agency decides ordered goods or services cannot be provided as conveniently or cheaply by a commercial enterprise.

Payment shall be made promptly by check on the written request of the agency or unit filling the order. Payment may be in advance or on providing the goods or services ordered and shall be for any part of the estimated or actual cost as determined by the agency or unit filling the order. A bill submitted or a request for payment is not subject to audit or certification in advance of payment. Proper adjustment of amounts paid in advance shall be made as agreed to by the heads of the agencies or units on the basis of the actual cost of goods or services provided.

An order placed or agreement made under this section obligates an appropriation of the ordering agency or unit. The amount obligated is deobligated to the extent that the agency or unit filling the

order has not incurred obligations, before the end of the period of availability of the appropriation, in-- (1) providing goods or services; or (2) making an authorized contract with another person to provide the requested goods or services.

Grants

The same definition as Cooperative Agreement; however, there is no substantial involvement anticipated between NMFS and the recipient during performance of the contemplated activity.

Interagency Agreements

A written document containing specific provisions of governing authorities, responsibilities, and funding entered into between NMFS and a reimbursing sponsor or between another organization and NMFS when NMFS is the sponsor. Such an agreement must be in existence prior to initiation of reimbursable work by NMFS and must cite the applicable legal authorities for entering into the agreement, whether the funding is coming into NMFS or going out. Depending on the project or service, various NMFS programmatic authorities permit these agreements as well as other authorities such as the Economy Act, 31 U.S.C. 1535, the Joint Project Authority, 15 U.S.C. 1525, and the Intergovernmental Cooperation Act, 31 U.S.C. 6505. A Model Interagency Agreement containing both mandatory and optional provisions is included in Chapter 2 of the NOAA Budget Handbook. This format may be used for both Federal and non-Federal organizations. It contains both mandatory and optional provisions.

Incoming Funds (Reimbursables)

Reimbursable work may be accepted only if it can be performed without adversely affecting regular NMFS programs and if: (1) the services would not be considered to be in competition with private enterprise because of NMFS's unique expertise; (2) the work cannot be performed economically by the requesting agency with its own facilities or by government-wide service agencies; (3) performance by NMFS is consistent with NMFS programs and will serve the public interest; (4) the results of the work will not cause controversy that will have an adverse effect on the Department's reputation for impartiality and objectivity; and (5) no exclusive proprietary interest would accrue to the other party.

The most common authority used for reimbursable work with other Federal entities is the Economy Act of 1932, as amended. All payments for work or services performed are to be deposited to the appropriation or fund against which the charges have been made. Furthermore, the act requires that a proper cost adjustment of amounts paid in advance be made on the basis of the actual cost of goods or services provided.

Incoming Funds (Joint Project Agreements)

The Secretary of Commerce has specific authority under 15 U.S.C. 1525 to engage in joint projects or perform services on matters of mutual interest for nonprofit organizations, research organizations, or public organizations and agencies. Joint project agreements are entered if: (1) the project is essential to the furtherance of NMFS programs; (2) the project is of mutual interest

and cannot be done effectively without the participation of the partner organization and NMFS; and (3) the cost of the project is apportioned equitably, unless a waiver of any portion of the costs has been approved by the Chief Financial Officer and Assistant Secretary for Administration, Department of Commerce.. (See Waiver Definition)

Such agreements require both the NMFS and the partner organization to contribute resources on an equitable basis when they engage in projects or perform services on matters of mutual interest. The budget for the project or the service must include separate breakouts of costs contributed by NMFS and the partner organization to demonstrate equitability in the conduct of the joint project. All payments for work or services performed are to be deposited to the appropriation or fund against which the charges have been made.

Outgoing Funds

Transfers of funds to other agencies is appropriate when: (1) the work would not be considered to be in competition with private enterprise because of the other agency's unique expertise; (2) specific legal authority exists to justify the transfer of funds as an appropriate undertaking; (3) the results of the work will not result in controversy that will have an adverse effect on the Department's reputation for impartiality and objectivity; (4) no exclusive proprietary interest would accrue to the other party; and (5) the transfer is in the best interests of the Federal Government. If the funds are to support a contract, cooperative agreement or grant, the transfer should include the agreement number, if known.

Memorandum of Agreement/Understanding (MOA/U)

In furthering its programs, NMFS becomes involved on a continuing basis with a large number of international, Federal, state, and local agencies, universities, and other private institutions. These relationships are encouraged and frequently require or are aided by proper documentation. The use of the MOA/U, as set forth in NOA 201-105, is appropriate whenever: (1) the transaction does not involve funding; (2) undertakings are assumed by both parties; (3) an official documentation of these undertakings is required or may be of interest to third parties such as the Congress, state legislatures, or university trustees; and (4) the undertakings are expected to continue over an extended period of time, although typically they can be terminated by either party on relatively short notice. NOA 201-105 provides guidance on drafting a MOA/U along with a sample agreement. Each must cite a statutory and/or regulatory authorities authorizing the objectives of the agreement.

Overhead Rate

The NOAA Office of Finance and Administration determines overhead rates for NMFS Headquarters and NMFS field offices based on cost experience from prior years. These rates are updated periodically and provided to the Financial Management Centers by the NMFS Budget Office. These rates must be used and applied to direct costs when developing budgets for reimbursable work in order to recover the total costs of tasks NMFS undertakes for other organizations.

Overhead represents indirect costs or expenses of an agency which cannot be charged as belonging exclusively to any particular part of the project or service being performed by NMFS personnel (rent, lighting, heating, accounting, other office expenses and depreciation).

Total Cost Recovery

The NMFS is required to recover full costs for reimbursable work and to ensure an equitable apportionment for joint projects in relation to the benefits received. Direct labor must be recorded in accordance with the NOAA-wide Standardized Labor Distribution Worksheet Procedures issued June 26, 1996 by the Office of Finance and Administration for such projects. Supplies, travel and other expenses directly related to the work must be recovered as well as the applicable overhead rate for the NMFS activity.

User Fees

User fees are to be charged by an agency when it conveys special benefits to individuals or organizations beyond those occurring to the general public. The fees are to be collected in advance of, or simultaneously with the rendering of services, unless appropriations and authority are provided in advance to allow reimbursable services. Absent statutory authority to the contrary, user fees collected by NMFS must be deposited into the Treasury. Guidance on user fees is provided in OMB Circular A-25, User Fees, and the Accounting Handbook, Chapters 17 and 18.

Waivers

Advance Payments

Chapter 2, NOAA Budget Handbook, provides guidance on waiving advance payments for both Federal and non-Federal sponsored work. Although advances are considered the primary method of payment, the head of the program office responsible for performing the reimbursable work may determine, on a case by case basis, that an advance payment is not feasible.

Work performed for non-Federal sponsors without an advance payment requires the head of the program office responsible for performing the work to justify the action and request, in writing, a waiver of the advance payment policy from the Chief, Office of Finance and Administration, prior to accepting the reimbursable work.

Elements of Distributed Costs

Chapter 2, NOAA Budget Handbook, provides guidance on requesting waivers of any costs associated with reimbursable work. No waivers of any elements of distributed costs will be made without prior approval of the Chief, Office of Finance and Administration. Distributed costs are defined in the Handbook and include such items as NOAA overhead, depreciation and GSA rent. Requests must be fully justified in writing prior to negotiating the agreement and include the amount requested to be waived. Each must also contain a direct task number to which the waived costs will be charged. Sample waiver request formats are provided in Appendix N of the Handbook.

Joint Project Agreement Costs

The Department Organization Order 10-5, prescribes the authority and functions of the Chief Financial Officer and Assistant Secretary for Administration. That order delegates to the Chief Financial Officer and Assistant Secretary for Administration the responsibilities of the Secretary of Commerce regarding special studies, reports, technical information, and other related functions under 15 U.S.C. 1525-1527 (Public Law (P.L.). This includes approval of waivers of costs under joint project agreements authorized by 15 U.S.C. 1525. That authority has been redelegated to the heads of operating units within the Department (Chapter 18, Sections 6.05 and 6.06, Department of Commerce Accounting Principles and Standards Handbook). The responsible NMFS field or Headquarters manager will prepare a justification for the cost which the non-profit organization, research organization or public organization or agency should not be required to pay. The request must be forwarded through the Assistant Administrator for Fisheries to the Chief Financial Officer/Chief Administrative Officer, NOAA, who will advise the Under Secretary for Oceans and Atmosphere or designee on determining the appropriate portion of the project's costs to be waived. Each waiver of cost must be obtained in advance of signing any agreement to undertake the joint project and in advance of beginning any work for the project.

Factors for Waiver of Costs

Each of the following factors may be a basis for waiver: (a) the organization is financially unable to pay its full apportioned cost; (b) the recovery of full cost is in conflict with statutory requirements or would seriously impair the objectives of the program or public policy; (c) the cost of collecting the fees would be an unduly large part of the receipts of the activity; (d) the furnishing of the service without charge is an appropriate or reciprocal courtesy to a foreign country or international organization or is in accordance with an international agreement to which the United States has subscribed; (e) comparable fees are set on a reciprocal basis with a foreign country; (f) the recipient is engaged in a non-profit activity designed for the public safety, health, or welfare; (g) payment of the full cost by a Federal agency, State or local government, or non-profit group would not be in the interest of the program; and (h) the furnishing of information to a recipient is clearly a reasonable exchange of information with a voluntary contributor of information to a Department program.

SAMPLE

JOINT PROJECT AGREEMENT

BETWEEN THE

NATIONAL MARINE FISHERIES SERVICE

AND THE

(NAME OF THE OTHER ORGANIZATION)

I. General Information

Provide general introductory information about the functions of the parties entering into the agreement and identify the partner(s) to the agreement (nonprofit organization, research organization, or public organization or agency).

II. References and Authorities

NMFS is authorized to enter into this agreement pursuant to the Department of Commerce's Joint Project Authority, 15 U.S.C. 1525. NMFS has determined that this arrangement is of mutual benefit to both parties and that the costs will be equitably apportioned. NMFS has programmatic authority to participate in this project pursuant to (cite statutory authority such as Fish and Wildlife Coordination Act, Atlantic Coastal Fisheries Cooperative Management Act, or other applicable authority).

III. Purpose

Provide reason(s) why the agreement is necessary and why the project cannot be done as effectively without the participation of the partner(s) and NMFS. Explain that the project is of mutual interest to the parties and is essential to the furtherance of NMFS's programs. Summarize what is to be accomplished under the terms of the agreement.

IV. Definitions

If necessary, identify and define terminology which is unique, technical or subject to variable definitions, and which is applicable to the agreement. This could include definitions of both non-technical and technical terminology as may be applicable to the provisions of the agreement. (This paragraph is optional.)

V. Responsibilities of Agencies

Describe the services to be performed and the specific responsibilities of each agency involved in the joint project. (A separate proposal or statement of work may also be incorporated by reference and attached to the agreement.)

VI. Period of Performance

Provide the start and ending date of the joint project.

VII. Funding and Payments

Agreement must state that funding is available for the current fiscal year. If agreement is for a longer period than the current fiscal year, estimated funding levels for each of the subsequent years should be included along with a statement that performance beyond current fiscal year is dependent on availability of funds.

A budget must be included either in the agreement or attached to it. The budget must reflect breakout of total estimated costs, including direct labor and appropriate overhead rate, for each agency participating in the joint project. The costs shall be apportioned equitably in relation to the benefits received by the partners to the agreement and an explanation included in the agreement attesting to this condition.

If funds are to be transferred to NMFS for their participation in the joint project, advance payment is the primary method for payment from both Federal and non-Federal participants. However, non-Federal participants <u>must</u> pay in advance, unless a waiver has been obtained prior to initiation of the project.

VIII. Amendments and Review

This agreement may be amended at any time by the mutual consent of the agencies concerned.

IX. Other Provisions

Nothing herein is intended to conflict with current NMFS or (name of agency) directives. If the terms of this agreement are inconsistent with existing directives of either of the agencies entering into this agreement, then those portions of this agreement which are determined to be inconsistent shall be invalid; but the remaining terms and conditions of this agreement not affected by inconsistency shall remain in full force and effect. At the first opportunity for review of the agreement, such changes as are deemed necessary will be accomplished by either an amendment or by entering into a new agreement, whichever is deemed expedient to the interest of both parties.

Should disagreement arise as to the interpretation of the provisions of this agreement, or amendments and/or revisions thereto, that cannot be resolved at the operating level, the area(s) of disagreement shall be reduced to writing by each party and presented to the other party for

consideration at least 30 days prior to forwarding to respective higher management for appropriate resolution.

X. Terms of the Agreement

The terms of this agreement will become effective upon the signature of both the approving officials of the respective agencies entering into this agreement.

The terms of this agreement will remain in effect until terminated by: mutual agreement, 60 days advanced written notice by either party, or ending date of the period of performance, whichever shall occur first.

APPROVED:	
National Marine Fisheries Service	Participating Agency - name
(Signature) Name, Title	(Signature) Name, Title
Date	Date